IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1636 of 1991

For Approval and Signature:

HON'BLE MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

P.A.CHUDASAMA

Versus

SECRETARY

Appearance:

1. Special Civil Application No. 1636 of 1991

MR DP VORA for Petitioner No. 1-8

M/S THAKKAR ASSOC. for Petitioner No. 1-8

MR AMIT KOTAK for Respondent No. 1

MR DEEPAK V PATEL for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE KUNDAN SINGH

Date of decision: 14/10/2003

ORAL JUDGEMENT

This petition has been filed for a declaration

that pay fixation done by G.D.D.C. in the lower scale of pay of Rs.950-1500 is discriminatory, unjust and illegal and for a direction to the respondents to give the revised pay scale of Rs. 1200-1800 from the date of the joining, as given to similarly placed other supervisors (P & A.H.), on the principle of 'equal pay for equal work' and to refix the pay of the petitioners in the revised scale of Rs. 1200-1800 from the date of the joining and arrears which may be worked out with 18% interest on a difference of pay, already drawn and that to be drawn after such refixation.

(2) These 8 petitioners were appointed on the post of supervisors (Procurement-cum-Animal Husbandry) with the pay scale of Rs. 290-8-346-EB--8-370-10-410-EB-10-480, vide appointment letters dated 19th June 1986, 26th June 1986 and 31st December 1986, pursuant to the advertisement issued in the daily Sandesh newspaper dated 23rd March 1986, inviting the applications from the eligible candidates for the post of Supervisors (P & A.H.). The appointment of the petitioners was made subject to certain conditions, mentioned in the appointment letters. When the petitioners joined services of G.D.D.C. Limited, there were other supervisors (P & A.H.), working under G.D.D.C. in the same pay scale of Rs. 290-480, such as Mr.S.G.Patel. The petitioners as well as other person Mr.S.G.Patel were performing the same functions and duties from the date of their joining the service of G.D.D.C. The Board of Directors of Gujarat Dairy Development Corporation held in the meeting of 08.09.1987, vide their resolution No.LIXI/VI/26(D) to adopt the pay scales prescribed for Gujarat Government servants under Gujarat Civil Services (Revision of Pay) Rules, 1987. The revised pay scales were adopted by G.D.D.C. with effect from 01.01.1986. Since all of them working in the same scale of pay and performing the same functions and duties, G.D.D.C. should have refixed their pay in the same revised scale of pay of Rs.1200-1800, but the corporation gave the pay scale of Rs.1200-1800 to Mr.S.G.Patel from 01.01.1986 and lower scale of Rs.950-1500 to the petitioners from the date of joining the service. The petitioners and Mr.S.G.Patel were holding the same post of supervisors and performing the same functions and duties. The petitioners made a representation to the corporation to remove this anomaly and they should be given the same revised pay scale of Rs.1200-1800 as is given to Mr.S.G.Patel. But, their representation was not considered. The respondent Nos.2 & 3 are the enterprises of the Government of Gujarat. The services of servants are regulated under the rules known as Service Rules,

1975. Under Rule 4 of these Service Rules the power to add, change or to make in the Service Rules are vested in the corporation only. The Board of Directors of the corporation in their meeting passed a resolution dated 06.09.1987 adopting the new pay scale applicable to employees of Government of Gujarat for the employees of the corporation with effect from 01.01.1986. The corporation has adopted the pay scale of Rs.1200-1800 for the post of supervisor (P & A.H.) with effect from 01.01.1986. Mr.N.S.Patel, who was working as one of on the post of supervisor (P. & A.H.) since 1984, under Rule 4 of Service Rules, 1975 the corporation revised the pay scale for the post of supervisor (P. & A.H.) from 290-480 to Rs.1200-1800 with effect from 01.01.1986, and the pay scale of Rs.1200-1800 was given to Mr.N.S.Patel but lower pay scale of Rs.950-1500 given to the petitioners is arbitrary and unjust. The petitioners made various representations to the corporation and to the Secretary of Agriculture & Rural Development, Government of Gujarat on several dates individually and collectively, but those representations have not been Clerks, who have been given the new scale of Rs.950-1500. treated to have been reverted to the post of Junior Clerks who and have been given the new scale of Rs.950-1500. The post of supervisor (P. & A.H.) is a promotional post from cadre of Junior Clerk. The lower posts and the promotional posts are equated and brought on the same scale of Rs.950-1500 that is not permissible under the Service rules, 1975 of the corporation. The corporation has already decided and adopted the pay scale of Rs.1200-1800 for the post of supervisor (P & A.H.). That decision has already been circulated to all the officers of the corporation. But, the petitioners have been denied the new pay scale without any reasons. The petitioners have been selected directly as supervisors (P & A.H.) and are appointed after 01.01.1986, but they are given the lower scale of Rs.950-1500. There are 3 categories of the supervisors such as:

(1) Those appointed before 01.01.1986.
(2) Those appointed directly after 01.01.1986
(3) Those promoted from the cadre of Junior Clerk, are performing all the same functions and duties, but they are being given different scales of pay.

Which is violative and in breach of principles of 'equal pay for equal work'. They had been denied of right, which had accrued to them from the beginning of their service. They have also been denied of equal treatment amongst the similarly placed employees of the

corporation in the application of same scale of pay of Rs.1200-1800. This post of supervisor carried the pre-revised pay scale of Rs.290-480. The post of supervisor is also a promotional post from the cadre of the Junior Clerk. Pre-revised pay scale of the post of Junior Clerk was Rs.260-400. Now the Junior Clerk is given the revised scale of Rs.950-1500, as the petitioners have been given the same revised pay scale of Rs.950-1500. Thus, the petitioners are being treated to have been reverted to the post of Junior Clerks, which is illegal. Hence, the fixation of pay of scale to be given to the petitioners in the revised scale of Rs.950-1500 deserves to be quashed and that corporation has already adopted the scale of Rs.1200-1800 for the post of supervisor (P & A.H.) after 01.01.1986 as per their circular issued to the subordinate officers. But, the petitioners have been made exception, which is discriminatory, unreasonable and is required to be set aside.

(3) The affidavit in reply on behalf of the respondents Nos. 2 & 3 Corporation has been filed, stating therein that in respect of the supervisors (P & A.H.), the Government has fixed the pay scale for the same posts i.e. Supervisors, who were appointed prior to 01.01.1986 in the pay scale of Rs.1200-1800 and the Supervisors appointed after 01.01.1986 in the pay scale of Rs.950-1500. The respondent corporation represented on 06.10.1987 and 20.08.1989 to the Government with a request that all the supervisors (P & A.H.) are similarly situated and are doing the same work, having the same qualifications must be paid the same revised pay scale, irrespective of the date of their appointment. The State Government by its letter dated 01.08.1989 refused to accept the said request of the corporation and asked the corporation to act as per the Government directions. Accordingly, the corporation fixed the revised pay scale of the petitioners and other supervisors as per the directions of the State Government. It is mentioned in the resolution of the corporation dated 08.09.1987, Board has noted the approval letter of the Government of Gujarat dated 08.09.1987 that when the Corporation is likely to be wound up and its staff will have to be absorbed by the Federation and the Unions, the revision in the pay structure at this juncture is not proper. The Corporation is facing acute financial crisis and presently corporation is making losses, which affect the financial position of the corporation. Recently the Government of Gujarat has revised the pay scale of its employees on the basis of the report of the committee of experts appointed by the Government for the purpose. The

committee after examining the recommendations of the 4th Pay Commission, appointed by the Central Government submitted its report to the Government. On the basis of this report, the Government of Gujarat has revised the pay structure of its employees vide GR dated 01.06.1987. This revision of pay scale has been made effective from 01.01.1986. It is as under;

"Resolved that pay structure as adopted by the Government of Gujarat for its employees under Gujarat Civil Services (Revision of Pay) Rules, 1987 be and is hereby adopted for the employees of the Corporation with effect from 01.01.1986 as approved by the Government of Gujarat vide letter dated 08.09.1987".

It is mentioned in the letter dated 08.09.1987, sent by the Agriculture & Village Development Department, Government of Gujarat that looking to the rules of recruitment of Live Stock Helper, which provide that he/she should be S.S.C. passed and he/she should have obtained training from recognized institute as Live Stock Helper. State Government grants approval in principle of pay scale of Rs.950-1500 for the pay scale of Live Stock Helper, but even then those who are appointed prior to 01.01.1986, with a view to protect their pay scale of Rs.1200-1800 is approved in principle for those persons in the same manner for the Milk Tender Driver, who are at present drawing pay scale of Rs.290-480, revised pay scale of 1150-1500 is approved in principle by the Government, but those persons, who are appointed on the said post prior to 01.01.1986 they would be entitled to get pay scale of Rs.1200-1800 with a view to protect their pay. The requisite information will have to be mentioned in the documents of the concerned employees. At this stage, the learned Counsel for the petitioner pointed out that supervisors are not mentioned in the aforesaid paragraph. Hence, the pay scale of Rs.290-480 is applicable, for which the revised pay scale as Rs.1200-1800 would be applicable. He also pointed out that from the enclosure to Government vernacular letter dated 08.09.1987 at serial No 1413 Livestock Helper, Junior Field Assistant, P&A.H. Supervisor, Electrician Grade-I have been given the old pay scale of Rs.290-480 and the revised pay scale is Rs.1200-1800. But, for the new recruits the revised pay scale has been shown Rs.950-1500.

(4) Additional affidavit on behalf of the respondent Nos.2 & 3 has also been filed, wherein it is stated that after the year 1990, the sale of milk came down in

various Units due to heavy competition in the market. The financial condition of the respondent corporation has become deteriorated day by day. The respondent corporation was compelled to close down Units, which may not be viable with a view to ease the financial burden and incurring continuous financial losses. ultimately, the respondent corporation approached the Board for Industrial and Financial Reconstruction (BIFR), New Delhi and filed Reference being Case No.607 of 1994 under the Sick Industrial Companies Act, 1985. The Bench by order dated 26th October 1994 declared the respondent corporation as sick company under the provisions of SICA. The respondent corporation had a staff strength of 1497 employees at its various units, including Head Office. In July 1999 the corporation has introduced the Voluntary Retirement Scheme and in response, 1325 employees had applied for the said scheme. Out of 1325 employees, 1203 employees have been paid all the benefits under the Scheme and they have been relieved from the services of the corporation. The petitioners had applied for Voluntary Retirement Scheme in the year 1999 and all the 8 petitioners were paid all their legal dues as per the scheme. They have been relieved from the services of the corporation on and after 31st July 1999. The petitioners have unconditionally accepted the legal dues before leaving their services and they have ceased to be employees of the respondent corporation on and after 31st July 1999. The condition of the corporation is continued to be very precarious and it has no funds. The Government by letter dated 01.08.1989 refused to accept the representation dated 6th July 1987, made by the corporation and the Government has refused to review the earlier decision pursuant to representations dated 20th August 1989, 1st July 1991 and 28th April 1991. The Government has denied the benefit of pay scale to the employees, who were appointed after 01.01.1986. All the petitioners were appointed after 01.01.1986. Hence, they have no legal right to claim pay revision as claimed by them. The State Government has taken policy decision, hence the petitioners' claim based on policy decision has no legal sanctity and the sanctioned scheme has legal force and become part of the Act.

(5) Affidavit in rejoinder on behalf of the petitioners was also filed, wherein it is pointed out that the claim of the petitioners is based on 2 grounds (i) the Government has decided to give the benefit of pay revision only to those employees, who were appointed prior to 01.01.1986 and (ii) respondent corporation is a sick unit and therefore, is not in a position to pay. So far as the first contention is concerned, no decision was

placed before this Court to point out some persons, who were appointed in the year 1988 as supervisors (P & A.H.) and are Junior to the petitioners in the cadre of the same post were given the pay scale of Rs.1200-1800. One Mr.U.V.Sherashiya, Mr.S.G.Patel and Mr.N.K.Modi, who were appointed as clerks in the year 1986 in the respondent corporation and were appointed to the post of supervisor (P & A.H.) in the year 1988, being juniors to the petitioners have been given the benefit in the pay scale of Rs.1200-1800. The second contention of the corporation that the corporation is sick unit, hence is unable to pay the arrears of the petitioners is not sustainable in view of the observations made by this Court in the case 2000 (1) GLR 521 and 1998 (2) GLH 15. The pay revision is linked with the pay scale, if the pay scale of post of supervisor (P & A.H.) is revised, then the date of appointment be seen for the post of supervisor (P & A.H.) and not the post of clerk, because the pay revision is not based on the pay revision of clerk. The contention of the respondent that Shri Patel, Shri Sherashiya and Shri Modi were appointed before 1986, hence, their pay cannot be compared with the petitioners is baseless. The petitioners have also filed affidavit in Sur Rejoinder, wherein it is stated that it cannot be said that the Government has by way of policy decision denied the benefit of pay revision to the P & A.H. supervisors, who are appointed after 1986, as neither the respondent corporation, nor the respondent Government has placed any such decision before this Court. On the other hand, learned Counsel for the petitioner placed letter of Government of Gujarat, Finance Department circular dated 26th November 1986 regarding the revision of pay allowances and other service conditions of the employees of public sector enterprises, Government guidelines, wherein it is stated that the State Government has decided to adopt Central Pay Scales alongwith other conditions of service as applicable to Central Government Employees as a total package deal and therefore, the public sector enterprises will also have to treat such an option as package deal, not only for the pay scale, but also for other conditions of service as may be decided by the State Government for its own employees for the revision of pay scale for the State Government Employees. The proposal has been referred to expert committee by the Government. Meanwhile, the public sector enterprises in the State were instructed to revise the scales of pay of their employees. It is further directed that in future, revision of scales of pay and other conditions of services, in any public enterprises shall be done invariably with prior approval of the Government, for which the concerned public enterprise will make a formal

proposal through the concerned administrative department and Bureau of public enterprises of the Finance Department. This process will ensure that such of the public enterprises which choose to adopt revised scales of the State Government, will do so as a package deal by accepting other conditions of service as well on the lines of the State Government employees.

(6) Heard learned Counsels for the parties at length and perused the relevant papers on record. It is contended by the learned counsel for the petitioners that the contention of the respondent corporation that the petitioners having been appointed after 01.01.1986, cannot be given the benefit of revised pay scale of Rs.1200-1800 is not sustainable in the eye of law in as much as the policy decision of the corporation does not make any distinction as the decision does not provide that employees, who were appointed prior to 1986 will not be placed in the pay scale of Rs.950-1500. On the contrary, letter dated 10.01.1990 of the respondent corporation provides that pay scale Rs.290-480 is revised as Rs.1200-1800. But the petitioners were not given the pay scale of Rs.1200-1800, which is contrary to the decision of the respondent corporation itself. As per the policy of the Government, the petitioners cannot be placed in the pay scale of Rs.1200-1800 is not sustainable, as vide letter dated 10th October 1988 and 23rd September 1988 Mr.U.V.Sherashiya and Mr.Modi were promoted to the post of supervisors (P & A.H.) from the post of Clerk have been given the pay scale of Rs.1200-1800. The promotion was given after 1986, as the petitioners were appointed after 01.01.1986. It is also contended by the learned Counsel for the petitioners that the contention of the respondent corporation has no substance because Mr.Sherashiya, Mr.Modi and Mr.Patel were clerks prior to 01.01.1986 not as supervisor and they were appointed as supervisors after 01.01.1986. Hence, the case of the petitioners is exactly identical and they are also entitled for the same pay sale. The Government has not included the cadre of supervisor in the sanction letter, hence it cannot be said that the Government has vide policy decision decided that the revision of pay scale can be given only to those appointees, who were appointed prior to 1986. As per the letter of the Government, pay scale is adopted by the State Government, the same pay scale should be adopted by the respondent corporation as a package deal without any modification. Whatever is the pay scale of the Government Employees, the same should be adopted by the respondent corporation. The respondent corporation cannot make any modification therein, there cannot be any

policy of the Government, which can provide that juniors should be paid higher pay scale then the seniors, it is not sustainable in the eye of law, as being arbitrary, discriminatory. There cannot be any policy, which can reduce the pay scale of the petitioners without any reasons. Second contention of the learned Counsel for the petitioners is that this Court has taken view that even if the company is a sick unit, the claim of the workman cannot be defeated by having recourse of Section 22 of the Sick Industrial Companies Act. The respondent corporation cannot pay the dues of the petitioners is not sustainable in the eye of law. Third contention of the learned Counsel for the petitioners is that as per the decision of this Court, the employees having accepted benefits of Voluntary Retirement Scheme cannot be denied their legitimate claim. The petitioners have not accepted any condition to forego their claim of revision of pay scale, while accepting the Scheme of Voluntary Retirement.

(7) In this case three questions arises for determination:

(1) As per the Government policy, can the benefits of pay revision be given only to those employees, who were appointed prior to 01.01.1986 and the petitioners having been appointed after 01.01.1986 can be denied for those benefits?

(2) The respondent corporation is a sick unit and is not in a position to pay the higher pay scale to the petitioners, even then the petitioners are entitled for the benefit of the revision of pay scale of Rs.1200-1800.

(3) Once the petitioners have accepted voluntary retirement, are the petitioners not entitled to raise any claim?

(8) So far as the first question is concerned, that the petitioners were appointed after 01.01.1986, hence the petitioners have not been given the revised pay scale of Rs.1200-1800. The revision of pay scale recommended by 4th Pay Commission has been adopted by the State Government and for the purpose of applicability of the revision of pay scale to the employees of the public enterprises, the public enterprises were directed to forward their proposal to the State Government. After approval by the State Government, the public enterprises

were to implement, if they have adopted the revision of pay scale can implement. In the present case, it is clearly mentioned in the affidavit in reply dated 15th October 1991 of the respondent Nos. 2 & 3 that in respect of the supervisors (P & A.H.), the Government has fixed the pay scales for the posts of the supervisors, the employees who were appointed prior to 01.01.1986 even appointed as supervisors after 01.01.1986, in the pay scale of Rs.1200-1800 and the employees appointed after 01.01.1986 and promoted as supervisors or supervisors directly appointed after 01.01.1986 in the pay scale of Rs.950-1500. Though the proposal made by the respondent corporation to adopt revision of pay scale for the supervisors (P & A.H.) as Rs.1200-1800, the State Government vide its letter dated 01.08.1989 refused to accept the said request of the corporation and asked the corporation to act as per Government direction. If the Government has taken policy decision in this respect, it is settled position of law that the Court cannot interfere with the policy taken by the State Government, unless it is inherently unreasonable, arbitrary and contrary to statutory provisions of law. The learned Counsel for the petitioners could not point out that the policy of the State Government making distinction regarding application of the revised pay scale on the basis of the date of appointment is inherently unreasonable and against the statutory provisions of law. Hence, the contention raised by the learned Counsel for the petitioner is not acceptable.

(9) So far as the next 2 questions are concerned first regarding the sickness of the corporation, the learned Counsel for the petitioner contended that even the unit is sick, the claim of the workman cannot be refused and he relied on the decision in the case of Parmeshwar Narayan Vs. Collector, Ahmedabad & Anr., reported in 2000 (1), GLR, 521, wherein it has been held that:

> "the applications under Section 33 C(2) of the Industrial Dispute Act for retrenchment compensation is not bar for the authorities under the Industrial Disputes Act to proceed notwithstanding the provisions of Sec. 22 of SIC.Act. The provisions of Industrial Disputes Act cannot be controlled or intended to have been curtailed by incorporation of Section 22 of S.I.C.Act. The provisions of Industrial Disputes Act and that of S.I.C.Act nowhere come in conflict as they are intended to deal with different situation. In this view of the matter,

it is not possible for me to accept the submissions made by Mr.Buch on behalf of respondent No."..... However, fact remains that the bench of B.I.F.R has clarified that it was not restraining or staying the payment of workers dues and that it is not open for the respondent No.2 to take shelter of Section 22 of S.I.C.A."

(10) On the contrary the contention of the learned Counsel for the respondent is that if the corporation is not in a position to bear the additional liability of revised pay scale, the financial position of the corporation is required to be seen and in that respect the decision has been taken either by the corporation or by the State Government cannot be said unjustified. That policy decision cannot be interfered by this Court. The learned Counsel for the respondent relied upon the Supreme Court decision in the case of State Hariyana Vs. Haryana Civil Secretariat Personal Staff Association, reported in A.I.R. 2002 SC 2589, wherein it has been held in paragraph 10 as under:

"It is to be kept in mind that the claim of equal pay for equal work is not a fundamental right vested in any employee though it is a constitutional goal to be achieved by the Government. Fixation of pay and determination of parity in duties and responsibilities is a complex matter which is for the executive to discharge. While taking a decision in the matter several relevant factors, some of which have been noted by this Court in the decided case, are to be considered keeping in view the prevailing financial position and capacity of the State Government to bear the additional liability of a revised scale of pay. It is also to be kept in mind that the priority given to different types of posts under the prevailing policies of the State Government is also a relevant factor for consideration by the State Government. In the context of complex nature of issues involved, the far-reaching consequences of a decision in the matter and its impact on the administration of the State Government Courts have taken the view that ordinarily Courts should not try to delve deep into administrative decisions pertaining to pay fixation and pay parity. That is not to say that the matter is not justiciable or that the Courts cannot entertain any proceeding against such administrative decision taken by the Government. The Courts should approach such

matters with restraint and interfere only when they are satisfied that the decision of the Government is patently irrational, unjust and prejudicial to a section of employees and the Government while taking the decision has ignored factors which are material and relevant for a decision in the matter. Even in a case where the Court holds the order passed by the Government to be unsustainable then ordinarily a direction should be given to the State Government or the authority taking the decision to reconsider the matter and pass a proper order. The Court should avoid giving a declaration granting a particular scale of pay and compelling the Government to implement the same".

(10.01) He also relied upon the decision of the Supreme Court in the case of A.K.Bindal and Anr. Vs. Union of India & Ors., reported in 2003 (5) SCC 163, wherein it has been held as under:

"The legal position is that identity of the government company remains distinct from the Government. The government company is not identified with the Union but has been placed under a special system of control and conferred certain privileges by virtue of the provisions contained in Sections 619 and 620 of the Companies Act. Merely because the entire shareholding is owned by the Central Government will not make the incorporated company as Central Government. It is also equally well settled that the employees of the government company are not civil servants and so are not entitled to the protection afforded by Article 311 of the Constitution (Pyare Lal Sharma V. Managing Director). Since employees of government companies are not government servants, they have absolutely no legal right to claim that the Government should pay their salary or that the additional expenditure incurred on account of revision of their pay scale should be met by the Government. Being employees of the companies it is the responsibility of the companies to pay them salary and if the company is sustaining losses continuously over a period and does not have the financial capacity to revise or enhance the pay scale, the petitioners cannot claim any legal right to ask for a direction to the Central Government to meet the additional expenditure which may be incurred on account of revision of pay scales. It appears that prior to issuance of the office memorandum dated 12-4-1993 the Government had been providing the necessary funds for the management of public sector enterprises which had been incurring losses. After the change in economic policy

introduced in the early nineties, the Government took a decision that the public sector undertakings will have to generate their own resources to meet the additional expenditure incurred on account of increase in wages and that the Government will not provide any funds for the same. Such of the public sector enterprises (government companies) which had become sick and had been referred to BIFR, were obviously running on huge losses and did not have their own resources to meet the financial liability which would have been incurred by revision of pay scales. By the office memorandum dated 19-7-1995 the Government merely reiterated its earlier stand and issued a caution that till a decision was taken to revive the undertakings, no revision in pay scale should be allowed. We, therefore, do not find any infirmity, legal or constitutional in the two office memorandums which have been challenged in the writ petitions".

(10.02) He also relied on the Full Bench decision of this Court in the case of Abad Dairy Vs. Munjibhai Dhanjibhai, reported in 2000 (3) GLH 409, wherein the claim of regularization or reinstatement and back wages to the workman has been considered. The financial condition of the industry and its requirement for the job or post cannot be overlooked. As a matter of fact there are other relevant circumstances and might justify denial in a given case. In the instant case admittedly Abad Dairy is now a sick unit due to competitive market in Gujarat. Its business has gone down so much that it is under tremendous financial strain. There are few job opportunities available with it. The sale of milk in the year 1994-95 was 3 lack litters per day, which has been gone down to hardly 45 thousand litters per day. As such it would be highly unjust to grant workman the relief of regularization and back wages as stated by them, which the sick unit is unable to provide. For the third question, the learned Counsel for the respondent submitted that the respondent corporation due to financial crisis provided a Voluntary Retirement Scheme for its employees. when the employees including the petitioner got voluntary retirement and have settled their dues, they have no right to make any claim for revised pay scale. He also relied upon the decision of this Court in the case of Rajya Dairy Karmachari Sabha Vs. Managing Director & Ors., reported in 2001 (3) GLH 182, wherein it has been held that the:

"regarding the question of voluntary retirement scheme it depends upon the position of the employee. If the employee chooses selection or opt not for the Voluntary Retirement Scheme, then

he will entitled for his legal rights as per the provisions of the Industrial Dispute Act and to that extent, there is no compulsion on the employee to accept the Voluntary Retirement Scheme. Once he accept the same, is governed by the provisions of the Voluntary Retirement Scheme. In this behalf after accepting the Voluntary Retirement Scheme he cannot agitate again by showing that the same is arbitrary, irrational, not useful to him or beneficial, then it was for him not to opt or to select the scheme. After accepting the scheme he cannot make any grievance in this behalf".

(10.03) In the decision of the Supreme Court in the case of E.Hill & Co. Ltd. Vs. State of U.P. & Ors. reported in 2002 (3) CLR 133 it has been observed that:

"Having accepted the aforesaid amounts, it is quite obvious that the conduct of Gurfan Ali showed that even though he had challenged his transfer to Bisunderpur unit of the company he accepted his termination of services by the company on accepting all amounts which were payable to him in accordance with law on account of closure of the unit where he was working. In view of this subsequent development, the earlier challenge of Gurfan Ali's transfer from Khamariah to Bisunderpur, infact, became infractuous because by his conduct he accepted the transfer when the terminal benefits which were paid to him on the closure of the unit at Bisumderpur were accepted by him".

(11) I have considered carefully the contentions raised by the learned Counsel for the parties. Undoubtedly the respondent corporation is a Government enterprise and it is not government itself and its employees cannot be equated to the employees of the State Government. It is undisputed fact that the respondent corporation is facing financial crisis. It has been declared sick unit by B.I.F.R. Looking the financial condition of the respondent corporation, the Government has taken policy decision regarding revision of pay scale that additional liability of revised pay scale for a particular class of employees who were appointed directly as supervisors (P & AH) after 01.01.1986 has been settled or resolved and has not been approved as held for the employees who were appointed prior to 01.01.1986 in order to preserve and maintain their status. Such policy decision of the Government in the facts and circumstances

cannot be said to be irrational, arbitrary or discriminatory. The Government policy decision cannot be challenged unless such policy decision is inherently irrational, arbitrary or unconstitutional. In my view the policy decision of the Government is not unjustified, irrational or unconstitutional. The decision has been taken by the Company or corporation for the Voluntary Retirement Scheme due to financial crisis of the concerned unit, all the petitioners have opted to take benefits of the scheme and they have been relieved from their service and they have ceased to be servants of the respondent corporation they have no right to agitate that they are still continuing in service and they are entitled for the benefits of the service. Once they accepted the benefits of the Voluntary Retirement Scheme, they cannot be permitted to agitate for their claim. The financial crisis is also to be looked into while granting the benefit of revised pay scale. In the present case due to financial crisis the corporation has been declared sick by B.I.F.R. and the employees of the public enterprise cannot be equated to the Government employees and they cannot be entitled for the benefits, which are available to the Government servant. Therefore, this petition is devoid of merits.

(12) Considering the facts and circumstances I do not find any good reason calling for interference in this petition, accordingly this petition is dismissed. Rule is discharged with no order as to costs.

(KUNDAN SINGH, J)

/MPS/